

AMENDED IN SENATE MAY 5, 2009
AMENDED IN SENATE APRIL 29, 2009
AMENDED IN SENATE APRIL 28, 2009

SENATE BILL

No. 399

**Introduced by Senator Yee
(Principal coauthor: Senator Romero)
(Coauthor: Senator Steinberg)**

February 26, 2009

An act to amend Section 1170 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 399, as amended, Yee. Sentencing.

Existing law provides that the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings or both may, for specified reasons, recommend to the court that a prisoner's sentence be recalled, and that a court may recall a prisoner's sentence.

~~This bill would establish criteria to be used by the secretary or the board for determining if a prisoner's sentence should be recommended for recall and resentencing when the~~ *authorize a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to life without parole to submit a petition for recall and resentencing to the sentencing court, as specified. The bill would establish certain criteria to be considered when a court decides whether to conduct a hearing on the petition for recall and resentencing and whether to grant the petition. The bill would require the court to make findings within 90 days of submission of the petition, and to hold*

a hearing if the court finds that the criteria are met, as specified. The bill would apply retroactively, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1170 of the Penal Code, as amended by
2 Section 1 of Chapter 416 of the Statutes of 2008, is amended to
3 read:

4 1170. (a) (1) The Legislature finds and declares that the
5 purpose of imprisonment for crime is punishment. This purpose
6 is best served by terms proportionate to the seriousness of the
7 offense with provision for uniformity in the sentences of offenders
8 committing the same offense under similar circumstances. The
9 Legislature further finds and declares that the elimination of
10 disparity and the provision of uniformity of sentences can best be
11 achieved by determinate sentences fixed by statute in proportion
12 to the seriousness of the offense as determined by the Legislature
13 to be imposed by the court with specified discretion.

14 (2) Notwithstanding paragraph (1), the Legislature further finds
15 and declares that programs should be available for inmates,
16 including, but not limited to, educational programs, that are
17 designed to prepare nonviolent felony offenders for successful
18 reentry into the community. The Legislature encourages the
19 development of policies and programs designed to educate and
20 rehabilitate nonviolent felony offenders. In implementing this
21 section, the Department of Corrections and Rehabilitation is
22 encouraged to give priority enrollment in programs to promote
23 successful return to the community to an inmate with a short
24 remaining term of commitment and a release date that would allow
25 him or her adequate time to complete the program.

26 (3) In any case in which the punishment prescribed by statute
27 for a person convicted of a public offense is a term of imprisonment
28 in the state prison of any specification of three time periods, the
29 court shall sentence the defendant to one of the terms of
30 imprisonment specified unless the convicted person is given any
31 other disposition provided by law, including a fine, jail, probation,
32 or the suspension of imposition or execution of sentence or is
33 sentenced pursuant to subdivision (b) of Section 1168 because he

1 or she had committed his or her crime prior to July 1, 1977. In
2 sentencing the convicted person, the court shall apply the
3 sentencing rules of the Judicial Council. The court, unless it
4 determines that there are circumstances in mitigation of the
5 punishment prescribed, shall also impose any other term that it is
6 required by law to impose as an additional term. Nothing in this
7 article shall affect any provision of law that imposes the death
8 penalty, that authorizes or restricts the granting of probation or
9 suspending the execution or imposition of sentence, or expressly
10 provides for imprisonment in the state prison for life, except as
11 provided in subdivision (e). In any case in which the amount of
12 preimprisonment credit under Section 2900.5 or any other provision
13 of law is equal to or exceeds any sentence imposed pursuant to
14 this chapter, the entire sentence shall be deemed to have been
15 served and the defendant shall not be actually delivered to the
16 custody of the secretary. The court shall advise the defendant that
17 he or she shall serve a period of parole and order the defendant to
18 report to the parole office closest to the defendant's last legal
19 residence, unless the in-custody credits equal the total sentence,
20 including both confinement time and the period of parole. The
21 sentence shall be deemed a separate prior prison term under Section
22 667.5, and a copy of the judgment and other necessary
23 documentation shall be forwarded to the secretary.

24 (b) When a judgment of imprisonment is to be imposed and the
25 statute specifies three possible terms, the choice of the appropriate
26 term shall rest within the sound discretion of the court. At least
27 four days prior to the time set for imposition of judgment, either
28 party or the victim, or the family of the victim if the victim is
29 deceased, may submit a statement in aggravation or mitigation. In
30 determining the appropriate term, the court may consider the record
31 in the case, the probation officer's report, other reports including
32 reports received pursuant to Section 1203.03 and statements in
33 aggravation or mitigation submitted by the prosecution, the
34 defendant, or the victim, or the family of the victim if the victim
35 is deceased, and any further evidence introduced at the sentencing
36 hearing. The court shall select the term which, in the court's
37 discretion, best serves the interests of justice. The court shall set
38 forth on the record the reasons for imposing the term selected and
39 the court may not impose an upper term by using the fact of any
40 enhancement upon which sentence is imposed under any provision

1 of law. A term of imprisonment shall not be specified if imposition
2 of sentence is suspended.

3 (c) The court shall state the reasons for its sentence choice on
4 the record at the time of sentencing. The court shall also inform
5 the defendant that as part of the sentence after expiration of the
6 term he or she may be on parole for a period as provided in Section
7 3000.

8 (d) When a defendant subject to this section or subdivision (b)
9 of Section 1168 has been sentenced to be imprisoned in the state
10 prison and has been committed to the custody of the secretary, the
11 court may, within 120 days of the date of commitment on its own
12 motion, or at any time upon the recommendation of the secretary
13 or the Board of Parole Hearings, recall the sentence and
14 commitment previously ordered and resentence the defendant in
15 the same manner as if he or she had not previously been sentenced,
16 provided the new sentence, if any, is no greater than the initial
17 sentence. The court resentencing under this subdivision shall apply
18 the sentencing rules of the Judicial Council so as to eliminate
19 disparity of sentences and to promote uniformity of sentencing.
20 Credit shall be given for time served.

21 (e) (1) When a defendant who was under 18 years of age at the
22 time of the commission of the offense for which the defendant was
23 sentenced to imprisonment for life without the possibility of parole
24 ~~has been committed to the custody of the Department of~~
25 ~~Corrections and Rehabilitation, the secretary of the department or~~
26 ~~the Board of Parole Hearings shall review the case no later than~~
27 ~~90 days before the time that the defendant has served 10 years to~~
28 ~~determine if the defendant satisfies three or more of the criteria~~
29 ~~set forth in paragraph (2). Defendants who have served 15 or more~~
30 ~~years but less than 25 years as of January 1, 2010, shall be reviewed~~
31 ~~so that at least 20 defendants have their initial review each year~~
32 ~~until all of those who have served more than 15 years but less than~~
33 ~~25 years are reviewed, starting with those who have served the~~
34 ~~longest time. Those who have served less than 15 years as of~~
35 ~~January 1, 2010, shall have their initial reviews as otherwise set~~
36 ~~forth in this section. The secretary or the board shall consider any~~
37 ~~documentation relevant to that determination, including~~
38 ~~documentation presented by the defendant, and shall issue written~~
39 ~~findings not later than 90 days after the date of review.~~ *has served*
40 *at least 10 years of that sentence, the defendant may submit to the*

1 *sentencing court a petition for recall and resentencing. The court*
2 *shall consider the petition and shall issue written findings not later*
3 *than 90 days after the submission of the petition. Defendants who*
4 *have served 15 or more years but less than 25 years as of January*
5 *1, 2010, shall be permitted to submit a petition for recall and*
6 *resentencing as follows:*

7 (A) *Those defendants who entered custody prior to July 1, 1993,*
8 *may submit a petition in 2010.*

9 (B) *Those defendants who entered custody on or after July 1,*
10 *1993, but prior to January 1, 1994, may submit a petition in 2011.*

11 (C) *Those defendants who entered custody on or after January*
12 *1, 1994, but prior to July 1, 1994, may submit a petition in 2012.*

13 (D) *Those defendants who entered custody on or after July 1,*
14 *1994, but prior to January 1, 1995, may submit a petition in 2013.*

15 (2) ~~If the secretary or the board~~ *court finds, based on a*
16 *preponderance of the evidence, that the defendant satisfies three*
17 *or more of the following criteria, ~~that finding shall be forwarded~~*
18 ~~*to the sentencing the court, which shall conduct a hearing as*~~
19 *specified in paragraph (3):*

20 (A) *The defendant was convicted pursuant to felony murder or*
21 *aiding and abetting murder provisions of law.*

22 (B) *The defendant does not have juvenile felony adjudications*
23 *for assault or other felony crimes with a significant potential for*
24 *personal harm to victims prior to the offense for which the sentence*
25 *is being considered for recall.*

26 (C) *The defendant committed the offense with at least one adult*
27 *codefendant.*

28 (D) *Prior to the offense for which the sentence is being*
29 *considered for recall, the defendant had insufficient adult support*
30 *or supervision and had suffered from psychological or physical*
31 *trauma, or significant stress.*

32 (E) *The defendant suffers from cognitive limitations due to*
33 *mental illness, developmental disabilities, or other factors that did*
34 *not constitute a defense, but influenced the defendant's*
35 *involvement in the offense.*

36 (F) *The defendant has performed acts that tend to indicate*
37 *rehabilitation or the potential for rehabilitation, including, but not*
38 *limited to, availing himself or herself of rehabilitative, educational,*
39 *or vocational programs, if those programs have been available at*
40 *his or her classification level and facility, using self-study for*

1 self-improvement, or taking action that demonstrates the presence
2 of remorse.

3 (G) The defendant has maintained family ties or connections
4 with others through letter writing, calls, or visits, or has eliminated
5 contact with individuals outside of prison who are currently
6 involved with crime.

7 (H) The defendant has had no violent disciplinary violations in
8 the last five years in which the defendant was determined to be
9 the aggressor.

10 (3) The court shall have the discretion to recall the sentence and
11 commitment previously ordered and to resentence the defendant
12 in the same manner as if the defendant had not previously been
13 sentenced, provided that the new sentence, if any, is not greater
14 than the initial sentence. The discretion of the court shall be
15 exercised in consideration of the criteria in paragraph (2). Victims,
16 or victim family members if the victim is deceased, shall be notified
17 of the resentencing hearing and shall retain their rights to
18 participate in the hearing.

19 (4) If the sentence is not recalled, ~~the board shall make the~~
20 ~~determination mandated by subdivision (a) again~~ *defendant may*
21 *submit another petition for recall and resentencing to the*
22 *sentencing court* when the defendant has been committed to the
23 custody of the department for ~~15 years, 20 years, and at least 15~~
24 ~~years. If recall and resentencing is not granted under that petition,~~
25 ~~the defendant may file another petition after having served 20~~
26 ~~years. If recall and resentencing is not granted under that petition,~~
27 ~~the defendant may file another petition after having served 24~~
28 ~~years. The final review shall be~~ *petition may be submitted, and the*
29 *response to that petition shall be determined, during the 24th* 25th
30 year of the defendant's sentence.

31 (5) In addition to the criteria in paragraph (2), the court may
32 consider any other criteria that the court deems relevant to its
33 decision, so long as the court identifies them on the record,
34 provides a statement of reasons for adopting them, and states why
35 the defendant does or does not satisfy the criteria.

36 (6) This subdivision shall have retroactive application.

37 (f) (1) Notwithstanding any other law and consistent with
38 paragraph (1) of subdivision (a), if the secretary or the Board of
39 Parole Hearings or both determine that a prisoner satisfies the

1 criteria set forth in paragraph (2), the secretary or the board may
2 recommend to the court that the prisoner's sentence be recalled.

3 (2) The court shall have the discretion to resentence or recall if
4 the court finds that the facts described in subparagraph (A) and
5 (B) or subparagraphs (B) and (C) exist:

6 (A) The prisoner is terminally ill with an incurable condition
7 caused by an illness or disease that would produce death within
8 six months, as determined by a physician employed by the
9 department.

10 (B) The conditions under which the prisoner would be released
11 or receive treatment do not pose a threat to public safety.

12 (C) The prisoner is permanently medically incapacitated with
13 a medical condition that renders him or her permanently unable
14 to perform activities of basic daily living, and results in the prisoner
15 requiring 24-hour total care, including, but not limited to, coma,
16 persistent vegetative state, brain death, ventilator-dependency, loss
17 of control of muscular or neurological function, and that
18 incapacitation did not exist at the time of the original sentencing.

19 The Board of Parole Hearings shall make findings pursuant to
20 this subdivision before making a recommendation for resentence
21 or recall to the court. This subdivision does not apply to a prisoner
22 sentenced to death or a term of life without the possibility of parole.

23 (3) Within 10 days of receipt of a positive recommendation by
24 the secretary or the board, the court shall hold a hearing to consider
25 whether the prisoner's sentence should be recalled.

26 (4) Any physician employed by the department who determines
27 that a prisoner has six months or less to live shall notify the chief
28 medical officer of the prognosis. If the chief medical officer
29 concurs with the prognosis, he or she shall notify the warden.
30 Within 48 hours of receiving notification, the warden or the
31 warden's representative shall notify the prisoner of the recall and
32 resentencing procedures, and shall arrange for the prisoner to
33 designate a family member or other outside agent to be notified
34 as to the prisoner's medical condition and prognosis, and as to the
35 recall and resentencing procedures. If the inmate is deemed
36 mentally unfit, the warden or the warden's representative shall
37 contact the inmate's emergency contact and provide the information
38 described in paragraph (2).

39 (5) The warden or the warden's representative shall provide the
40 prisoner and his or her family member, agent, or emergency

1 contact, as described in paragraph (4), updated information
2 throughout the recall and resentencing process with regard to the
3 prisoner's medical condition and the status of the prisoner's recall
4 and resentencing proceedings.

5 (6) Notwithstanding any other provisions of this section, the
6 prisoner or his or her family member or designee may
7 independently request consideration for recall and resentencing
8 by contacting the chief medical officer at the prison or the
9 secretary. Upon receipt of the request, the chief medical officer
10 and the warden or the warden's representative shall follow the
11 procedures described in paragraph (4). If the secretary determines
12 that the prisoner satisfies the criteria set forth in paragraph (2), the
13 secretary or board may recommend to the court that the prisoner's
14 sentence be recalled. The secretary shall submit a recommendation
15 for release within 30 days in the case of inmates sentenced to
16 determinate terms and, in the case of inmates sentenced to
17 indeterminate terms, the secretary shall make a recommendation
18 to the Board of Parole Hearings with respect to the inmates who
19 have applied under this section. The board shall consider this
20 information and make an independent judgment pursuant to
21 paragraph (2) and make findings related thereto before rejecting
22 the request or making a recommendation to the court. This action
23 shall be taken at the next lawfully noticed board meeting.

24 (7) Any recommendation for recall submitted to the court by
25 the secretary or the Board of Parole Hearings shall include one or
26 more medical evaluations, a postrelease plan, and findings pursuant
27 to paragraph (2).

28 (8) If possible, the matter shall be heard before the same judge
29 of the court who sentenced the prisoner.

30 (9) If the court grants the recall and resentencing application,
31 the prisoner shall be released by the department within 48 hours
32 of receipt of the court's order, unless a longer time period is agreed
33 to by the inmate. At the time of release, the warden or the warden's
34 representative shall ensure that the prisoner has each of the
35 following in his or her possession: a discharge medical summary,
36 full medical records, state identification, parole medications, and
37 all property belonging to the prisoner. After discharge, any
38 additional records shall be sent to the prisoner's forwarding
39 address.

1 (10) The secretary shall issue a directive to medical and
2 correctional staff employed by the department that details the
3 guidelines and procedures for initiating a recall and resentencing
4 procedure. The directive shall clearly state that any prisoner who
5 is given a prognosis of six months or less to live is eligible for
6 recall and resentencing consideration, and that recall and
7 resentencing procedures shall be initiated upon that prognosis.

8 (g) Any sentence imposed under this article shall be subject to
9 the provisions of Sections 3000 and 3057 and any other applicable
10 provisions of law.

11 (h) A sentence to state prison for a determinate term for which
12 only one term is specified, is a sentence to state prison under this
13 section.

14 (i) This section shall remain in effect only until January 1, 2011,
15 and as of that date is repealed, unless a later enacted statute, that
16 is enacted before that date, deletes or extends that date.

17 SEC. 2. Section 1170 of the Penal Code, as amended by Section
18 2 of Chapter 416 of the Statutes of 2008, is amended to read:

19 1170. (a) (1) The Legislature finds and declares that the
20 purpose of imprisonment for crime is punishment. This purpose
21 is best served by terms proportionate to the seriousness of the
22 offense with provision for uniformity in the sentences of offenders
23 committing the same offense under similar circumstances. The
24 Legislature further finds and declares that the elimination of
25 disparity and the provision of uniformity of sentences can best be
26 achieved by determinate sentences fixed by statute in proportion
27 to the seriousness of the offense as determined by the Legislature
28 to be imposed by the court with specified discretion.

29 (2) Notwithstanding paragraph (1), the Legislature further finds
30 and declares that programs should be available for inmates,
31 including, but not limited to, educational programs, that are
32 designed to prepare nonviolent felony offenders for successful
33 reentry into the community. The Legislature encourages the
34 development of policies and programs designed to educate and
35 rehabilitate nonviolent felony offenders. In implementing this
36 section, the Department of Corrections and Rehabilitation is
37 encouraged to give priority enrollment in programs to promote
38 successful return to the community to an inmate with a short
39 remaining term of commitment and a release date that would allow
40 him or her adequate time to complete the program.

1 (3) In any case in which the punishment prescribed by statute
2 for a person convicted of a public offense is a term of imprisonment
3 in the state prison of any specification of three time periods, the
4 court shall sentence the defendant to one of the terms of
5 imprisonment specified unless the convicted person is given any
6 other disposition provided by law, including a fine, jail, probation,
7 or the suspension of imposition or execution of sentence or is
8 sentenced pursuant to subdivision (b) of Section 1168 because he
9 or she had committed his or her crime prior to July 1, 1977. In
10 sentencing the convicted person, the court shall apply the
11 sentencing rules of the Judicial Council. The court, unless it
12 determines that there are circumstances in mitigation of the
13 punishment prescribed, shall also impose any other term that it is
14 required by law to impose as an additional term. Nothing in this
15 article shall affect any provision of law that imposes the death
16 penalty, that authorizes or restricts the granting of probation or
17 suspending the execution or imposition of sentence, or expressly
18 provides for imprisonment in the state prison for life, except as
19 provided in subdivision (e). In any case in which the amount of
20 preimprisonment credit under Section 2900.5 or any other provision
21 of law is equal to or exceeds any sentence imposed pursuant to
22 this chapter, the entire sentence shall be deemed to have been
23 served and the defendant shall not be actually delivered to the
24 custody of the secretary. The court shall advise the defendant that
25 he or she shall serve a period of parole and order the defendant to
26 report to the parole office closest to the defendant's last legal
27 residence, unless the in-custody credits equal the total sentence,
28 including both confinement time and the period of parole. The
29 sentence shall be deemed a separate prior prison term under Section
30 667.5, and a copy of the judgment and other necessary
31 documentation shall be forwarded to the secretary.

32 (b) When a judgment of imprisonment is to be imposed and the
33 statute specifies three possible terms, the court shall order
34 imposition of the middle term, unless there are circumstances in
35 aggravation or mitigation of the crime. At least four days prior to
36 the time set for imposition of judgment, either party or the victim,
37 or the family of the victim if the victim is deceased, may submit
38 a statement in aggravation or mitigation to dispute facts in the
39 record or the probation officer's report, or to present additional
40 facts. In determining whether there are circumstances that justify

1 imposition of the upper or lower term, the court may consider the
2 record in the case, the probation officer's report, other reports
3 including reports received pursuant to Section 1203.03 and
4 statements in aggravation or mitigation submitted by the
5 prosecution, the defendant, or the victim, or the family of the victim
6 if the victim is deceased, and any further evidence introduced at
7 the sentencing hearing. The court shall set forth on the record the
8 facts and reasons for imposing the upper or lower term. The court
9 may not impose an upper term by using the fact of any
10 enhancement upon which sentence is imposed under any provision
11 of law. A term of imprisonment shall not be specified if imposition
12 of sentence is suspended.

13 (c) The court shall state the reasons for its sentence choice on
14 the record at the time of sentencing. The court shall also inform
15 the defendant that as part of the sentence after expiration of the
16 term he or she may be on parole for a period as provided in Section
17 3000.

18 (d) When a defendant subject to this section or subdivision (b)
19 of Section 1168 has been sentenced to be imprisoned in the state
20 prison and has been committed to the custody of the secretary, the
21 court may, within 120 days of the date of commitment on its own
22 motion, or at any time upon the recommendation of the secretary
23 or the Board of Parole Hearings, recall the sentence and
24 commitment previously ordered and resentence the defendant in
25 the same manner as if he or she had not previously been sentenced,
26 provided the new sentence, if any, is no greater than the initial
27 sentence. The court resentencing under this subdivision shall apply
28 the sentencing rules of the Judicial Council so as to eliminate
29 disparity of sentences and to promote uniformity of sentencing.
30 Credit shall be given for time served.

31 (e) (1) When a defendant who was under 18 years of age at the
32 time of the commission of the offense for which the defendant was
33 sentenced to imprisonment for life without the possibility of parole
34 ~~has been committed to the custody of the Department of~~
35 ~~Corrections and Rehabilitation, the secretary of the department or~~
36 ~~the Board of Parole Hearings shall review the case no later than~~
37 ~~90 days before the time that the defendant has served 10 years to~~
38 ~~determine if the defendant satisfies three or more of the criteria~~
39 ~~set forth in paragraph (2). Defendants who have served 15 or more~~
40 ~~years but less than 25 years as of January 1, 2010, shall be reviewed~~

1 so that at least 20 defendants have their initial review each year
2 until all of those who have served more than 15 years but less than
3 25 years are reviewed, starting with those who have served the
4 longest time. Those who have served less than 15 years as of
5 January 1, 2010, shall have their initial reviews as otherwise set
6 forth in this section. The secretary or the board shall consider any
7 documentation relevant to that determination, including
8 documentation presented by the defendant, and shall issue written
9 findings not later than 90 days after the date of review. *has served*
10 *at least 10 years of that sentence, the defendant may submit to the*
11 *sentencing court a petition for recall and resentencing. The court*
12 *shall consider the petition and shall issue written findings not later*
13 *than 90 days after the submission of the petition. Defendants who*
14 *have served 15 or more years but less than 25 years as of January*
15 *1, 2010, shall be permitted to submit a petition for recall and*
16 *resentencing as follows:*

17 (A) *Those defendants who entered custody prior to July 1, 1993,*
18 *may submit a petition in 2010.*

19 (B) *Those defendants who entered custody on or after July 1,*
20 *1993, but prior to January 1, 1994, may submit a petition in 2011.*

21 (C) *Those defendants who entered custody on or after January*
22 *1, 1994, but prior to July 1, 1994, may submit a petition in 2012.*

23 (D) *Those defendants who entered custody on or after July 1,*
24 *1994, but prior to January 1, 1995, may submit a petition in 2013.*

25 (2) ~~If the secretary or the board~~ *court* finds, based on a
26 preponderance of the evidence, that the defendant satisfies three
27 or more of the following criteria, ~~that finding shall be forwarded~~
28 ~~to the sentencing the court, which~~ shall conduct a hearing as
29 specified in paragraph (3):

30 (A) The defendant was convicted pursuant to felony murder or
31 aiding and abetting murder provisions of law.

32 (B) The defendant does not have juvenile felony adjudications
33 for assault or other felony crimes with a significant potential for
34 personal harm to victims prior to the offense for which the sentence
35 is being considered for recall.

36 (C) The defendant committed the offense with at least one adult
37 codefendant.

38 (D) Prior to the offense for which the sentence is being
39 considered for recall, the defendant had insufficient adult support

1 or supervision and had suffered from psychological or physical
2 trauma, or significant stress.

3 (E) The defendant suffers from cognitive limitations due to
4 mental illness, developmental disabilities, or other factors that did
5 not constitute a defense, but influenced the defendant's
6 involvement in the offense.

7 (F) The defendant has performed acts that tend to indicate
8 rehabilitation or the potential for rehabilitation, including, but not
9 limited to, availing himself or herself of rehabilitative, educational,
10 or vocational programs, if those programs have been available at
11 his or her classification level and facility, using self-study for
12 self-improvement, or taking action that demonstrates the presence
13 of remorse.

14 (G) The defendant has maintained family ties or connections
15 with others through letter writing, calls, or visits, or has eliminated
16 contact with individuals outside of prison who are currently
17 involved with crime.

18 (H) The defendant has had no violent disciplinary violations in
19 the last five years in which the defendant was determined to be
20 the aggressor.

21 (3) The court shall have the discretion to recall the sentence and
22 commitment previously ordered and to resentence the defendant
23 in the same manner as if the defendant had not previously been
24 sentenced, provided that the new sentence, if any, is not greater
25 than the initial sentence. The discretion of the court shall be
26 exercised in consideration of the criteria in paragraph (2). Victims,
27 or victim family members if the victim is deceased, shall be notified
28 of the resentencing hearing and shall retain their rights to
29 participate in the hearing.

30 (4) If the sentence is not recalled, ~~the board shall make the~~
31 ~~determination mandated by subdivision (a) again~~ *defendant may*
32 *submit another petition for recall and resentencing to the*
33 *sentencing court* when the defendant has been committed to the
34 custody of the department for ~~15 years, 20 years, and at least 15~~
35 ~~years. If recall and resentencing is not granted under that petition,~~
36 ~~the defendant may file another petition after having served 20~~
37 ~~years. If recall and resentencing is not granted under that petition,~~
38 ~~the defendant may file another petition after having served 24~~
39 ~~years. The final review shall be~~ *petition may be submitted, and the*

1 *response to that petition shall be determined, during the*~~24th~~ *25th*
2 *year of the defendant's sentence.*

3 (5) In addition to the criteria in paragraph (2), the court may
4 consider any other criteria that the court deems relevant to its
5 decision, so long as the court identifies them on the record,
6 provides a statement of reasons for adopting them, and states why
7 the defendant does or does not satisfy the criteria.

8 (6) This subdivision shall have retroactive application.

9 (f) (1) Notwithstanding any other law and consistent with
10 paragraph (1) of subdivision (a), if the secretary or the Board of
11 Parole Hearings or both determine that a prisoner satisfies the
12 criteria set forth in paragraph (2), the secretary or the board may
13 recommend to the court that the prisoner's sentence be recalled.

14 (2) The court shall have the discretion to resentence or recall if
15 the court finds that the facts described in subparagraphs (A) and
16 (B) or subparagraphs (B) and (C) exist:

17 (A) The prisoner is terminally ill with an incurable condition
18 caused by an illness or disease that would produce death within
19 six months, as determined by a physician employed by the
20 department.

21 (B) The conditions under which the prisoner would be released
22 or receive treatment do not pose a threat to public safety.

23 (C) The prisoner is permanently medically incapacitated with
24 a medical condition that renders him or her permanently unable
25 to perform activities of basic daily living, and results in the prisoner
26 requiring 24-hour total care, including, but not limited to, coma,
27 persistent vegetative state, brain death, ventilator-dependency, loss
28 of control of muscular or neurological function, and that
29 incapacitation did not exist at the time of the original sentencing.

30 The Board of Parole Hearings shall make findings pursuant to
31 this subdivision before making a recommendation for resentence
32 or recall to the court. This subdivision does not apply to a prisoner
33 sentenced to death or a term of life without the possibility of parole.

34 (3) Within 10 days of receipt of a positive recommendation by
35 the secretary or the board, the court shall hold a hearing to consider
36 whether the prisoner's sentence should be recalled.

37 (4) Any physician employed by the department who determines
38 that a prisoner has six months or less to live shall notify the chief
39 medical officer of the prognosis. If the chief medical officer
40 concurs with the prognosis, he or she shall notify the warden.

1 Within 48 hours of receiving notification, the warden or the
2 warden's representative shall notify the prisoner of the recall and
3 resentencing procedures, and shall arrange for the prisoner to
4 designate a family member or other outside agent to be notified
5 as to the prisoner's medical condition and prognosis, and as to the
6 recall and resentencing procedures. If the inmate is deemed
7 mentally unfit, the warden or the warden's representative shall
8 contact the inmate's emergency contact and provide the information
9 described in paragraph (2).

10 (5) The warden or the warden's representative shall provide the
11 prisoner and his or her family member, agent, or emergency
12 contact, as described in paragraph (4), updated information
13 throughout the recall and resentencing process with regard to the
14 prisoner's medical condition and the status of the prisoner's recall
15 and resentencing proceedings.

16 (6) Notwithstanding any other provisions of this section, the
17 prisoner or his or her family member or designee may
18 independently request consideration for recall and resentencing
19 by contacting the chief medical officer at the prison or the
20 secretary. Upon receipt of the request, the chief medical officer
21 and the warden or the warden's representative shall follow the
22 procedures described in paragraph (4). If the secretary determines
23 that the prisoner satisfies the criteria set forth in paragraph (2), the
24 secretary or board may recommend to the court that the prisoner's
25 sentence be recalled. The secretary shall submit a recommendation
26 for release within 30 days in the case of inmates sentenced to
27 determinate terms and, in the case of inmates sentenced to
28 indeterminate terms, the secretary shall make a recommendation
29 to the Board of Parole Hearings with respect to the inmates who
30 have applied under this section. The board shall consider this
31 information and make an independent judgment pursuant to
32 paragraph (2) and make findings related thereto before rejecting
33 the request or making a recommendation to the court. This action
34 shall be taken at the next lawfully noticed board meeting.

35 (7) Any recommendation for recall submitted to the court by
36 the secretary or the Board of Parole Hearings shall include one or
37 more medical evaluations, a postrelease plan, and findings pursuant
38 to paragraph (2).

39 (8) If possible, the matter shall be heard before the same judge
40 of the court who sentenced the prisoner.

1 (9) If the court grants the recall and resentencing application,
2 the prisoner shall be released by the department within 48 hours
3 of receipt of the court's order, unless a longer time period is agreed
4 to by the inmate. At the time of release, the warden or the warden's
5 representative shall ensure that the prisoner has each of the
6 following in his or her possession: a discharge medical summary,
7 full medical records, state identification, parole medications, and
8 all property belonging to the prisoner. After discharge, any
9 additional records shall be sent to the prisoner's forwarding
10 address.

11 (10) The secretary shall issue a directive to medical and
12 correctional staff employed by the department that details the
13 guidelines and procedures for initiating a recall and resentencing
14 procedure. The directive shall clearly state that any prisoner who
15 is given a prognosis of six months or less to live is eligible for
16 recall and resentencing consideration, and that recall and
17 resentencing procedures shall be initiated upon that prognosis.

18 (g) Any sentence imposed under this article shall be subject to
19 the provisions of Sections 3000 and 3057 and any other applicable
20 provisions of law.

21 (h) A sentence to state prison for a determinate term for which
22 only one term is specified, is a sentence to state prison under this
23 section.

24 (i) This section shall become operative on January 1, 2011.